

MONTANA LEGISLATIVE HISTORY

Chapter 256 1995

Bill H 84 S _____ Original bill & history ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) 1-11 _____ C

Hearing Date(s) 3-14 _____ C

2-11 _____ C

_____ C

_____ C

_____ C

_____ C

_____ C

Date Out 2-13 _____ C

Date Out 3-14

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

HB 82

INTRODUCED BY HERRON

CREATE THE CRIMINAL OFFENSE OF PUBLIC INDECENCY

1/03 INTRODUCED
 1/03 FIRST READING
 1/03 REFERRED TO JUDICIARY
 1/09 HEARING
 1/12 TABLED IN COMMITTEE
 2/23 MISSED TRANSMITTAL DEADLINE
 DIED IN COMMITTEE

HB 83

INTRODUCED BY HERRON, ET AL.

REVISE THE OBSCENITY LAW

1/03 INTRODUCED
 1/03 FIRST READING
 1/03 REFERRED TO JUDICIARY
 1/09 HEARING
 1/14 COMMITTEE REPORT—BILL PASSED AS AMENDED
 1/16 2ND READING PASSED AS AMENDED 53 47
 1/17 3RD READING PASSED 53 47

 TRANSMITTED TO SENATE
 1/18 FIRST READING
 1/18 REFERRED TO JUDICIARY
 2/08 HEARING
 2/14 TABLED IN COMMITTEE
 3/03 COMMITTEE REPORT—BILL NOT PASSED AS AMENDED
 3/03 ADVERSE COMMITTEE REPORT ADOPTED 32 18
 3/03 MOTION FAILED TO RECONSIDER PREVIOUS ACTION 22 28
 AND PLACE ON 2ND READING

HB 84

INTRODUCED BY STORY

CLARIFY AUTHORITY OF DIRECTOR OF DEPARTMENT OF CORRECTIONS
 AND HUMAN SERVICES TO PLACE A DEFENDANT SUFFERING FROM A
 MENTAL DISEASE OR DEFECT

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN
 SERVICES

1/03 INTRODUCED
 1/03 FIRST READING
 1/03 REFERRED TO JUDICIARY
 1/11 HEARING
 2/14 COMMITTEE REPORT—BILL PASSED AS AMENDED
 2/15 2ND READING PASSED 97 1
 2/16 3RD READING PASSED 95 1

 TRANSMITTED TO SENATE
 2/21 FIRST READING
 2/21 REFERRED TO JUDICIARY
 3/14 HEARING
 3/15 COMMITTEE REPORT—BILL CONCURRED
 3/22 2ND READING CONCURRED 49 0
 3/23 3RD READING CONCURRED 50 0

 RETURNED TO HOUSE
 3/24 SIGNED BY SPEAKER
 3/24 SIGNED BY PRESIDENT
 3/27 TRANSMITTED TO GOVERNOR
 3/28 SIGNED BY GOVERNOR
 CHAPTER NUMBER 256
 EFFECTIVE DATE: 10/01/95

House BILL NO. 84

INTRODUCED BY

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE AUTHORITY OF THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO PLACE A DEFENDANT SUFFERING FROM A MENTAL DISEASE OR DEFECT; AND AMENDING SECTION 46-14-312, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-14-312, MCA, is amended to read:

"46-14-312. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence the defendant to be committed to the custody of the director of the department of corrections and human services to be placed in an appropriate correctional or mental health institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The director may subsequently transfer the defendant to another correctional or mental health institution that will better serve the defendant's custody, care, and treatment needs. The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.

(3) Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:

(a) the defendant no longer suffers from a mental disease or defect;

(b) the defendant's mental disease or defect no longer renders the defendant unable to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of

1 law;

2 (c) the defendant suffers from a mental disease or defect but is not a danger to the defendant or
3 others; or

4 (d) the defendant suffers from a mental disease or defect that makes the defendant a danger to
5 the defendant or others, but:

6 (i) there is no treatment available for the mental disease or defect;

7 (ii) the defendant refuses to cooperate with treatment; or

8 (iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or
9 defect.

10 (4) The sentencing court may make any order not inconsistent with its original sentencing
11 authority, except that the length of confinement or supervision must be equal to that of the original
12 sentence. The professional person shall review the defendant's status each year."

13 -END-

HOUSE JUDICIARY

Page 2

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0074	HOLLAND, DON	1/03	1/10	ALLOW COURT OF RECORD TO ORDER JURY FEE BE PAID BY REQUESTOR OR LOSING PARTY TABLED 1/13 16-3 RECONSIDER 2/8	PASS AS AMENDED 2/8	VOTE: 14-5	2/10
HB0082	HERRON, JACK	1/03	1/09	REVISE INDECENT EXPOSURE CRIME & CREATE CRIME OF PUBLIC INDECENCY TABLED ON 01/12	VOTE: 11-9		
HB0083	HERRON, JACK	1/03	1/09	REVISE CRIME OF OBSCENITY & PROVIDE FOR FORFEITURE OF OBSCENE MATERIAL PASS AS AMENDED 1/12	VOTE: 11-8		1/14
HB0084	STORY, ROBERT	1/03	1/11	CLARIFY PLACEMENT OF DEFENDANTS SUFFERING FROM MENTAL DISEASE OR DEFECT PASS AS AMENDED 2/11	VOTE: 19-0		2/14
HB0093	MENAHAN, RED	1/05	1/10	ALTERNATIVE SENTENCE FOR SEX OFFENDERS; TREATMENT PROGRAM POSTPONE ACTION 1/24	TABLED ON 02/11	VOTE: 16-3	
HB0108	COBB, JOHN	1/07	1/11	DRUG INFORMATION COURSE FOR CONVICTION OF MISDEMEANOR DRUG OFFENSE DO PASS	1/12	VOTE: 19-0	1/13
HB0117	ANDERSON, SHIELL	1/10	1/16	COMPEL TREATMENT PLAN FOR DEFENDANT FOUND UNFIT TO PROCEED POSTPONE ACTION 1/13	PASS AS AMENDED 2/11	VOTE: 19-0	2/14
HB0131	FUCHS, DANIEL	1/10	1/16	ALLOW CERTAIN TYPES OF PUNITIVE DAMAGES AGAINST GOVERNMENT TABLED ON 01/17	VOTE: 13-6		
HB0135	COBB, JOHN	1/11	1/18	REQUIRE ATTORNEY GENERAL TO REPRESENT STATE IN BANKRUPTCY PROCEEDINGS PASS AS AMENDED 1/31	VOTE: 18-1		2/01
HB0150	AHNER, CHRIS	1/12	1/19	CLARIFY THE DUTIES AND MEMBERSHIP OF YOUTH PLACEMENT COMMITTEES PASS AS AMENDED 2/11	VOTE: 17-0		2/15
HB0157	DENNY, MATT	1/12	2/03	LIFE SENTENCE AND LIFE REGISTRATION FOR SEX OFFENDERS PASS AS AMENDED 2/11	VOTE: 19-0		2/13
HB0158	FUCHS, DANIEL	1/12	1/23	REVISE SCAFFOLDING LAWS PASS AS AMENDED 1/27	VOTE: 14-4		1/31

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on January 11, 1995, at
8:05 AM

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: Rep. William Boharski

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 84, HB 108
Executive Action: HB 71, Tabled

HEARING ON HB 84

Opening Statement by Sponsor:

{Tape: 1; Side: A}

REP. ROBERT R. STORY, JR., HD 24, presented HB 84 to the committee. The purpose of this bill is to clarify the authority of the director of the Department of Corrections and Human Services regarding placement of a mentally ill person who has been convicted of a crime to an appropriate institution.

Proponents' Testimony:

Dan Anderson, Director, Mental Health Division, Department of Corrections and Human Services, said that currently they have 10 individuals who have been sentenced under this statute who have been found guilty of a crime, but because of the issue of mental illness at the time of commission of the crime, the judge has sentenced them to the custody of the director for placement in an institution. The intent of this legislation is to clarify that the director has the authority to make a judgment based upon the information he has available through correctional professionals and mental health professionals who work for the department for initial placement and later transfer the person to another institution as the needs of the person change.

Carl Keener, MD, Medical Director, Montana State Hospital, presented written testimony in support of HB 84. EXHIBIT 1

Opponents' Testimony:

Andree LaRosa, Montana Advocacy Program, said they are going on record in opposition but would be in support of it with some changes. The primary concern is that it allows the director the discretion to transfer people from a correctional facility to a mental health facility or back again. They have concerns relating to the constitutional right of due process under the bill as it is written. EXHIBIT 2 clarifies their position.

Questions From Committee Members and Responses:

REP. SHIELL ANDERSON asked Dr. Keenar to respond to Ms. Larosa's concerns about unfettered discretion placed in the hands of the director.

Dr. Keenar said he believed these people are sentenced to the department and that there are provisions already in place for transfers that protect an individual from transfer between the state prison and the hospital.

REP. DEB KOTTEL asked if the person who is sentenced under Title 46, Chapter 18 becomes mentally ill in the prison could not be transferred to the mental hospital without a civil commitment hearing.

Mr. Anderson said that a person being sentenced normally to the prison who then becomes mentally ill may be transferred in three ways to the state hospital: 1) The director has the authority for 10-day emergency transfer, 2) the person may come voluntarily, and 3) the person may come through civil commitment.

REP. KOTTEL asked if this then applies to those sentenced under Title 46-14-311 MCA.

Mr. Anderson answered, "Yes."

REP. KOTTEL asked if there are internal policies specifying a hearing prior to the decision of the director to remove that person from the mental health institution back to a correctional facility or if it was solely up to the director's discretion.

Mr. Anderson said that currently, because in their opinion, it is not clear what the director's authority is, they do not have a procedure.

REP. KOTTEL asked if, once the person is transferred back to the prison and the prison psychiatrist deems it necessary to transfer the person back to the mental hospital, there is a treatment team or some hearing or due process in governing that decision.

Mr. Anderson said that currently the prison staff and the mental hospital staff consult to determine whether it is an appropriate transfer.

{Tape: 1; Side: A; Approx. Counter: 18.7}

REP. KOTTEL asked if a prisoner could be sent to the mental hospital under the provisions of this bill by the prison warden as a way to punish that prisoner's negative behavior.

Mr. Anderson said that could only happen as part of a conspiracy of fairly large dimensions between the warden and the mental health professionals at the state hospital.

REP. KOTTEL asked if that means there is a procedural safeguard, in that the director of the prison would need the consent of the mental health professionals for such a transfer to the mental health institution and vice versa.

Mr. Anderson said the mental health staff and the correctional staff reach agreement and then the director will authorize transfer. It has happened that the prison staff and mental hospital staff disagree; then they have a conference and the director weighs the evidence and makes a decision.

REP. LOREN SOFT asked who determines whether these persons should be placed in the state hospital rather than the prison system.

Mr. Anderson said that often the judge goes beyond the language in the statute and specifies the Montana State Hospital, and generally then they comply with the order. But the statute is not completely clear that the director has the complete discretion to designate placement in a correctional or mental health facility.

REP. SOFT asked if the judge seeks the input from the mental health professionals or the director before he makes that decision.

Mr. Anderson said, "Not to my knowledge." He said there may be consultation with the probation system in terms of presentence investigation.

REP. SOFT asked what the intervening mechanism would be to ensure the input from mental health professionals in the placement decision.

Mr. Anderson said it would make the most practical sense to make that evaluation at the state hospital.

REP. SOFT stated that even though the bill is written placing the authority with the director, he believed that the decision to make the transfer is done by the professional team treatment in the location.

Mr. Anderson said that they have a great deal of input, but it really should go to the director for the ultimate decision. It would be hard to imagine a situation where the director would ignore the consensus of the state hospital and the prison staffs.

{Tape: 1; Side: A; Approx. Counter: 28.6}

REP. LINDA MC CULLOCH asked what would keep someone from recommending a transfer to the prison because of economic factors.

Dr. Keenar stated that no one would be transferred without strong, documented evidence that the person either did not have a mental illness or had repeatedly refused attempts at treatment for mental illness.

REP. MC CULLOCH asked then if this would be governed by a recommendation from the treatment team.

Dr. Keenar said this would first be a decision by the treatment team wherever the individual is being treated and then be discussed with the prison, through the medical director and the director of the department with a recommendation of the medical director of the state hospital.

REP. MC CULLOCH asked Ms. Larosa to reiterate the changes she had testified would make the bill acceptable.

Ms. Larosa referred to her written testimony to clarify their position. She believes these changes will ensure due process to the individual before they are transferred, still enables the department to accomplish that transfer and meets the constitutional requirement. **EXHIBIT 2**

REP. MC CULLOCH asked if this means that every time a person is to be transferred between the facilities, a court hearing would be necessary.

Ms. Larosa answered that it would take a court hearing for transfer into a correctional facility. At the outset that person would be placed in a mental health facility and not directly to the prison. They believe that is appropriate since the court would have heard the evidence which found the person guilty by reason of a mental illness, disease or defect.

{Tape: 1; Side: A; Approx. Counter: 32.3}

REP. LIZ SMITH asked how this grew out of internal procedures of the Montana State Hospital working toward accreditation standards established because of a law suit charging a wrongful blending of criminals with the mentally ill.

Dr. Keenar replied that these people in the hospital cannot be mixed with civil commitments now.

REP. SMITH cited the need for a psychiatrist at the prison to meet the needs of the growing population of the mentally ill at that facility. She asked if this gives clarity as to placement.

Dr. Keenar said this facilitates the process for getting treatment for an inmate who may need treatment who has already been sentenced as guilty, but who was mentally ill at the time of the offense.

REP. SOFT asked if **Mr. Anderson** would concur with the amendments proposed by **Ms. Larosa**.

Mr. Anderson said that it would change nearly entirely what they are trying to accomplish. They believe it is appropriate to give the director the authority to transfer without the necessity of going back to the court each time.

REP. SOFT agreed it would substantially change the bill, but questions the total authority in the hands of the director. He asked if they would be open to changing the wording to reflect that a client could be placed in an appropriate facility for custody, care and treatment and then the inclusion of wording that a treatment team could transfer based on their evaluation.

Mr. Anderson asked if he understood that the director would still be in the process, but his decision would be based on the evaluation by appropriate professionals. He said he had no problem with that.

CHAIRMAN CLARK relinquished the chair to **VICE CHAIR ANDERSON**.

REP. JOAN HURDLE asked that if the professional team gives input while the director makes the ultimate decision currently, what is the necessity of this bill.

Mr. Anderson answered that they are not currently clear about the authority to transfer these individuals between institutions. But there are other situations in which the treatment teams can make a determination about an appropriate transfer.

REP. HURDLE asked for specifics of the membership of such a professional treatment team.

Mr. Anderson said it would consist of a psychiatrist, a psychologist, a social worker, a registered nurse, and a member of the rehabilitation staff. They would also try to have a member of the direct care staff present.

REP. HURDLE asked if this is a written recommendation and determination.

Mr. Anderson said the treatment plan consists of the written record as well as progress notes.

REP. HURDLE asked if there is a sign-off on that written record for each member of the team.

Dr. Keenar said that each member should sign off on the treatment plan.

CHAIRMAN CLARK resumed the chair.

CHAIRMAN CLARK asked for the average length of time it takes to get a court order to have a person transferred.

Dr. Keenar said it can happen fairly quickly if there is no objection. However, he cited an example where there have been objections and it has taken so long the sentence is near expiration and the patient has not received any treatment.

CHAIRMAN CLARK asked if this bill would give the authority to transfer the person to the prison rather than to discharge the patient.

Dr. Keenar said that this bill would have given the director the authority on their recommendation to transfer to him to the prison at the point where he refused treatment. As they have waited for the right to treat him, his mental condition has

deteriorated and at that point, they would not transfer him to the prison, but would rather go for guardianship and treatment. Under normal conditions, it would give the authority to transfer to the prison at the point of refusal of treatment and upon release from the prison would be under stricter supervision than upon release from the hospital. In this specific case, this would not be the case, but this is an example of how it would work in most cases.

REP. SOFT asked Mr. Anderson if he would be open to working with him on the amendments.

Mr. Anderson said he would.

REP. STORY closed recommending the committee approve the bill.

CHAIRMAN CLARK closed the hearing on HB 84.

{Tape: 1; Side: A; Approx. Counter: 47.4}

HEARING ON HB 108

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, feels that HB 108 basically requires persons who have been convicted of a dangerous drug misdemeanor to attend a dangerous drug information course in the same way that those convicted of DUI must take an information course as well as possible treatment.

Proponents' Testimony:

Darryl Bruno, Administrator, Alcohol and Drug Abuse Division, said that this bill is supported by the Department of Corrections and Human Services, Alcohol and Drug Division as the agency responsible under 53-24-208 MCA for approving facilities eligible to provide the court school. They are also the agency responsible for providing the counselors who would do the assessment evaluation. They also develop the standards for the DUI court school now. They believe the program could easily be merged with the current curriculum with very minimal cost. They believe the court school should be self-supporting like the DUI course is supported now.

Pat Melby, Rimrock Foundation, Billings, spoke in support of this bill. They believe they can offer this course at minimal expense.

Kathy McGowan, Chemical Dependency Programs of Montana, said the organization is comprised of inpatient and outpatient chemically dependent persons. These members were polled and they believe the present programs can be easily adapted to include this program and they do support this bill.

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 1/11/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski			✓
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓ <i>late</i>	✓	
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

TESTIMONY ON HB 84

by Carl Keener, M.D., Medical Director, Montana State Hospital

House Bill No. 84 would allow the Director of Corrections and Human Services to transfer individuals sentenced as guilty but mentally ill to the most appropriate setting. Individuals who might need transfer fall into three main groups.

1. Those who were misdiagnosed initially or recovered quickly from any mental illness soon after being placed at the hospital.
2. Those who have a mental illness but refuse to cooperate with treatment.
3. Those who do not respond to any treatment, such as certain personality disorders and delusional disorder.

For example, one individual comes to mind who was sentenced under this act who soon after admission showed no signs of mental illness. Not only did symptoms of any mental illness disappear, but the patient interfered with the treatment of other patients by suggesting they not participate in therapy, not take medication, or not cooperate with the treatment program. Such individuals also tend to intimidate, exploit, and victimize seriously mentally ill patients with whom they are placed. For example, one individual with no visible means of support constantly has money. Our only explanation is that he is exploiting other patients by outwitting them. Such activities by these individuals interfere with the treatment of the seriously mentally ill, and in those cases where it recreates victimization can actually make the patient worse. One such individual had secured a \$10,000 loan from a patient until staff learned of the act and prohibited completion of the illicit financial arrangement.

Perhaps most important is the fact that such individuals, when ready for discharge from the hospital, are not accepted by the mental health centers because they have no identifiable mental illness. The mental health center correctly asks what they can do for them as there is nothing to treat. It often is more helpful to the individual, and serves the interest of society better, if that person can be transferred to the prison and released from the prison through appropriate programs of supervision and accountability.

It is counter-productive to keep someone who is guilty but mentally ill in the State Hospital when such individual then refuses treatment which might help him in not reoffending. Some such individuals would be more appropriately transferred to the prison. I might add that this is also less expensive for the state.

There are a small number of mental conditions for which there is no treatment to date, or which are resistant to known treatment. Perhaps the best example of this would be some personality disorders where the individual has firmly entrenched personality traits of manipulation, lying, exploitation, and a total insensitivity to the needs and welfare of others. In some situations such calloused individuals would be more appropriate for a prison setting.

The bill also provides for convicted inmates who are or become mentally ill to be quickly transferred to the State Hospital for appropriate treatment of their mental illness.

Overall, I feel the provisions of House Bill No. 84 best serve both the defendant and society in managing individuals who present criminal and antisocial behavior.

EXHIBIT 2
DATE 1/11/95
HB 84

MONTANA ADVOCACY PROGRAM, Inc.

316 North Park, Room 211
P.O. Box 1680
Helena, Montana 59624

(406)444-3889
1-800-245-4743
(VOICE - TDD)
Fax #: (406)444-0261

January 11, 1995

Representative Bob Clark, Chairperson
House Judiciary Committee
State Capitol
Helena, Montana 59620

Re: HB 84

Mr. Chairman and Members of the Committee:

For the record, my name is Andree Larose and I am a staff attorney for the Montana Advocacy Program. Montana Advocacy Program is a non-profit organization which advocates the rights of individuals with disabilities. We are here to testify in opposition to HB 84, as it is currently worded. With some changes, which I will describe, we would be in support of the bill.

1. We oppose the grant of unfettered discretion to the department to transfer inmates between correctional facilities and mental health facilities. HB 84, as proposed, raises constitutional questions. One U.S. Supreme Court decision has held that a state cannot transfer an inmate to a mental health facility without the person's consent or without following the civil commitment process.

2. We would support the adoption of HB 84 with certain amendments. We propose to delete the department's option of placing a defendant found guilty by reason of mental disease or defect in a correctional facility at the outset. Instead, the statute should allow the commitment of the individual to the department for placement in an appropriate mental health facility. After all, this is a person who has already been found, after an extensive judicial proceeding, to suffer from a mental disease or defect. If there is a need to transfer a criminally committed patient to the correctional facility, we propose that such a transfer be made by the court, utilizing the procedures outlined in subsection 3 for the release of a defendant who no longer suffers from a mental disease or defect.

3. We propose that Section 46-14-312, MCA, as proposed by the department, be amended as follows:

46-14-312. Sentence to be imposed. (1) *remains the same.*

(2) If the court finds that the defendant at the time of the commission of the offense suffered

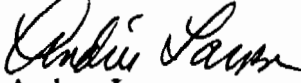
from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence the defendant to be committed to the custody of the director of the department of corrections and human services to be placed in an appropriate (~~delete "correctional or"~~) mental health facility (~~delete "institution"~~) for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). (~~Delete "The director may subsequently transfer the defendant to another correctional or mental health institution that will better serve the defendant's custody, care, and treatment needs."~~) The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.

(3) Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence or transfer to a correctional facility, if the professional person certifies that:

(a) *the remainder of this statute remains the same.*

We urge you to vote amend this bill in a manner which I have suggested. Thank you for your time.

Sincerely,


Andree Larose

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Judiciary COMMITTEE DATE 1/11/95
BILL NO. HB 84 SPONSOR(S) Rep STORY

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Carl L. Keener MD	Montana State Hosp	✓	
Dan Anderson	MT Division	✓	
Charles R. Brooks	Yellowstone City		
Audrie Barora			✓
Mary			

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:visbcom.man

CS-14

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 11, 1995, at 7:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action:	HB 41	DO PASS AS AMENDED
	HB 84	DO PASS AS AMENDED
	HB 117	DO PASS AS AMENDED
	HB 150	DO PASS AS AMENDED
	HB 157	DO PASS AS AMENDED
	HB 214	DO PASS AS AMENDED
	HB 60, HB 93, HB 258	TABLE
	HB 271, HB 382, HB 388	TABLE
	HB 332, HB 378	DO PASS

EXECUTIVE ACTION ON HB 84

Motion: REP. SOFT MOVED HB 84 DO PASS.

Motion: REP. SOFT MOVED TO AMEND HB 84. EXHIBIT 5

Discussion: REP. SMITH accepted the amendments and described that her interpretation of them was to not leave the entire responsibility for placement on the director of the department.

REP. SOFT said the intent was to be sure that the director would take into account the recommendations from the treatment team in making placement decisions.

REP. JOAN HURDLE remembered discussion about transfer of a patient for refusal of treatment and REP. SOFT said that did not come up in subcommittee discussions.

REP. BOHARSKI asked where the final responsibility rested.

REP. SOFT said the evaluation and recommendations of the treatment team would be taken into account but ultimately the director still would have the authority to do what he needed to do.

REP. BOHARSKI asked if the word, "institution," on line 22 had been changed to "facility." It had been.

Vote: The motion carried unanimously.

Motion/Vote: REP. BOHARSKI MOVED HB 84 DO PASS AS AMENDED. The motion carried unanimously.

{Tape: 1; Side: b; Approx. Counter: 25.4; Comments: REP. DEBBIE SHEA voted by proxy on all following bills.}

EXECUTIVE ACTION ON HB 117

Motion: REP. ANDERSON MOVED HB 117 DO PASS.

Motion: REP. SMITH MOVED HB 117 BE AMENDED. EXHIBIT 6

Discussion: REP. MOLNAR believed that though they were reluctant to do so, the court could do what these amendments provided now. He did not know what would be accomplished.

REP. DUANE GRIMES said his initial reaction was the same and that it looked to him as if they were trying to prevent people from avoiding prosecution by saying they are unfit to proceed and giving them a way to protract out the whole issue. He asked if Mr. Dan Anderson, without objection from the committee, could respond to the possibility that the amendment would nullify the purpose of the bill.

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL #1

DATE 2/11/95

7:00 AM

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

For subcomm - not edited

EXHIBIT 5
DATE 2/11/95
HB 84

Amendments to House Bill No. 84
First Reading Copy

Requested by Rep. Soft's Subcommittee
For the Committee on the Judiciary

Prepared by John MacMaster
January 30, 1995

1. Page 1, line 19.
Following: "placed"
Insert: ", after consideration of the recommendations of the
professionals providing treatment to the defendant,"
2. Page 1, line 20.
Strike: "institution"
Insert: "facility"
3. Page 1, line 22.
Following: "may"
Insert: ", after considering the recommendations of the
professionals providing treatment to the defendant,"
Strike: "institution"
Insert: "facility"

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 2-11-95

I request to be excused from the Judiciary Committee
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Don McGee.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
HB 60 - Table	✓	
HB 41 - Pass - Amend	✓	
HB 93 - Table	✓	
HB 84 - Amend - Passed	✓	
HB 117 - Amend - Passed	✓	
HB 150 - Amend - Passed	✓	
HB 332 - Passed	✓	
HB 382 - Table	✓	
HB 258 - Table	✓	
HB 271 - Table	✓	
HB 388 - Table	✓	

HOUSE BILL

SENATE BILL /AMENDMENT	AYE	NO
HB 377 378	✓	

Rep. Cliff Taylor
(Signature)

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 2/11/95

I request to be excused from the Judiciary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Rep Anderson.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
<u>HB 84</u>	☒	☐

SENATE BILL/AMENDMENT	AYE	NO

Rep. Tash
(Signature)

DATE _____



HOUSE STANDING COMMITTEE REPORT

February 13, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 84 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Page 1, line 19.

Following: "placed"

Insert: ", after consideration of the recommendations of the professionals providing treatment to the defendant,"

2. Page 1, line 20.

Strike: "institution"

Insert: "facility"

3. Page 1, line 22.

Following: "may"

Insert: ", after considering the recommendations of the professionals providing treatment to the defendant,"

Strike: "institution"

Insert: "facility"

- END -

AS.
Committee Vote:
Yes 19, No 0.

371520SC.Hdh

CHAIRMAN--BRUCE CRIPPEN

SECRETARY-JUDY KEINTZ

NORMAL SCHEDULE => SITE: ROOM 325

DAYS: M,T,W,T,F

TIME: 9:00 A.M.

SENATE JUDICIARY

- BILL NO-- REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ---- DATE READ

HB0026	WYATT, DIANA	REVISE MEDICAL LEGAL PANEL ACT	2/03 CONCUR	VOTE:	2/03
	1/17	2/03			
HB0037	ELLINGSON, JON	REMOVE STATUTE OF LIMITATIONS EXTENSION FOR INCARCERATED CRIMINALS	2/02 CONCUR	VOTE:	2/02
	1/21	2/02			
HB0041	SMITH, LIZ	PROVIDE FOR ADMINISTERING MEDICATION INVOLUNTARILY TO MENTAL HEALTH PATIENT	3/06 CONCUR AS AMENDED	VOTE:	3/08
	2/21	3/06			
HB0046	SIMON, BRUCE	EXPAND SCOPE OF CRIME OF ARSON	3/02 CONCUR	VOTE:	3/03
	2/01	3/01			
HB0055	BOHLINGER, JOHN	CONFORM CHILD SUPPORT INCOME DEDUCTION ACT TO FEDERAL REGULATIONS	3/15 CONCUR	VOTE:	3/16
	3/06	3/15			
HB0064	EWER, DAVID	REQUIRE AGE AS BONA FIDE QUALIFICATION FOR POLICE OFFICER POSITION	3/07 CONCUR	VOTE:	3/08
	2/20	3/07			
HB0065	MCKEE, JEANETTE	REVISE LAWS GOVERNING COMMITMENT TO RESIDENTIAL FACILITIES FOR DEV. DISABLED	3/15 CONCUR	VOTE:	3/16
	2/21	3/15			
HB0069	FISHER, MARJORIE	REVISE CRIME VICTIMS' LAWS	3/02 CONCUR	VOTE:	3/03
	1/27	3/01			
HB0074	HOLLAND, DON	ALLOW COURT OF RECORD TO ORDER JURY FEE BE PAID BY REQUESTOR OR LOSING PARTY	3/13, 3-14, 3-15 3/22 CONCUR AS AMENDED	VOTE:	3/23
	2/20	3/10			
HB0083	HERRON, JACK	REVISE CRIME OF OBSCENITY & PROVIDE FOR FORFEITURE OF OBSCENE MATERIAL	2/14 3/02 ADVERSE RPT ADOPT	VOTE:	3/03
	1/18	2/08			
HB0084	STORY, ROBERT	CLARIFY PLACEMENT OF DEFENDANTS SUFFERING FROM MENTAL DISEASE OR DEFECT	3/14 CONCUR	VOTE:	3/15
	2/21	3/14			

HOUSE BILL NO. 84

INTRODUCED BY STORY

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE AUTHORITY OF THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO PLACE A DEFENDANT SUFFERING FROM A MENTAL DISEASE OR DEFECT; AND AMENDING SECTION 46-14-312, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-14-312, MCA, is amended to read:

"46-14-312. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence the defendant to be committed to the custody of the director of the department of corrections and human services to be placed, AFTER CONSIDERATION OF THE RECOMMENDATIONS OF THE PROFESSIONALS PROVIDING TREATMENT TO THE DEFENDANT, in an appropriate correctional or mental health institution FACILITY for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The director may, AFTER CONSIDERING THE RECOMMENDATIONS OF THE PROFESSIONALS PROVIDING TREATMENT TO THE DEFENDANT, subsequently transfer the defendant to another correctional or mental health institution FACILITY that will better serve the defendant's custody, care, and treatment needs. The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.

(3) Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:

(a) the defendant no longer suffers from a mental disease or defect;

1 (b) the defendant's mental disease or defect no longer renders the defendant unable to appreciate
2 the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of
3 law;

4 (c) the defendant suffers from a mental disease or defect but is not a danger to the defendant or
5 others; or

6 (d) the defendant suffers from a mental disease or defect that makes the defendant a danger to
7 the defendant or others, but:

8 (i) there is no treatment available for the mental disease or defect;

9 (ii) the defendant refuses to cooperate with treatment; or

10 (iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or
11 defect.

12 (4) The sentencing court may make any order not inconsistent with its original sentencing
13 authority, except that the length of confinement or supervision must be equal to that of the original
14 sentence. The professional person shall review the defendant's status each year."

15 -END-

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By ACTING CHAIRMAN RIC HOLDEN, on March 14, 1995,
at 8:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 84, HB 256, HB 345, HB 356, HB 357
Executive Action: HB 84, HB 356, HB 357, HB 240, HB 429,
HB 214. HB 74 - discussion only.

{Tape: 1; Side: A; Approx. Counter: 00}

HEARING ON HB 256

Opening Statement by Sponsor:

REPRESENTATIVE ROGER SOMERVILLE, Kalispell, House District 78,
presented what he characterized as a good common-sense, get-
tough-on-drunk-drivers bill. This bill would add a felony

legislature would decide to re-impose good time, they could make it applicable and he did not think reducing the sentence would be illegal. He said the system could still function.

SENATOR BARTLETT asked for further information. She supported the bill, but was interested in the department's best estimates of not only these bills, but ALL the changes proposed in this session that will affect our corrections system. He agreed. **SENATOR SHARON ESTRADA** asked **Mr. Thomas** for an estimate of how many people were paroled last year. **Mr. Thomas** said the Parole Board releases approximately 350 people a year into adult supervision. In response to a further question, he said there were 1,355 prisoners now. There was not a quota system, he said.

{Tape: 2; Side: A; Approx. Counter: 00 Comments: poor quality sound}

Closing by Sponsor:

REPRESENTATIVE BOHARSKI stated that before he compiled this bill he read an NRA crime report which stated that 80 per cent of the prisoners had a possibility of getting 20 per cent shorter time-served amounts if they did good time. He stated that he had voted in this session to spend four times the amount of money than in all the sessions he'd been there. Legislators are responsible to the public to explain that they just cannot build 1,000 new prison cells in the next 6 months. It's impossible. This bill would be a step in the right direction, though. It is not a panacea to solve all the problems. This bill would make the judges more accountable, and it would eliminate some of the negotiations prosecutors engage in with defense attorneys, making the presentation to the judge much cleaner.

HEARING ON HB 84

Opening Statement by Sponsor:

REPRESENTATIVE ROBERT STORY, House District 24, Stillwater County and the Southern and Eastern portion of Sweetgrass County, sponsored HB 84. It is a simple bill, he said, allowing the people assigned to the Department of Corrections and Human Services to transfer people suffering from a mental disease or defect to the State Hospital or the State Prison, for example.

Proponents' Testimony:

Dan Anderson, Administrator, Mental Health Division, Department of Corrections and Human Services, read and presented written testimony. (EXHIBIT 4) He also presented written testimony from **Carl L. Keener**, M.D., Medical Director, Montana State Hospital, who was unable to be present. (EXHIBIT 5)

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR BRUCE CRIPPEN asked about current law. Mr. Anderson said the issue was unclear. The law talks about placing a person in the appropriate institution but was not very explicit as to whether it referred to a mental health institution or a correctional institution. To his knowledge, every person had ended up at the state hospital, where they've stayed. In some cases, either it was a poor evaluation to begin with, or they've recovered enough of their mental health so that they should not be in that kind of facility. SENATOR CRIPPEN asked if they were moved, were they moved after hearing the recommendations of the professionals treating them? Mr. Anderson said yes, they had done that, but they had to go to the court to get the authority. SENATOR CRIPPEN said the court never loses its jurisdiction over a person. What if there was an objection to the removal, and what would be the proper form? Mr. Anderson said either the director or the defendant may petition the sentencing court for a review of the sentence. CHAIRMAN HOLDEN asked about the number of the bill (low), and if there was a hang-up in the chain? The sponsor said the bill went into the House Judiciary Committee the first week of the session and came out the last. They were very thorough in their examination and they did amend it. He thought they just had bigger fish to fry. SENATOR JABS asked for clarification on Line 22, and if it meant that a person would be committed under Section 1, that they could only be treated for that amount of time? Mr. Anderson said it was correct, they were under time sentences. If at the end of that sentence they are still considered to be mentally ill, they could go into a civil commitment to keep them at the hospital.

Closing by Sponsor:

REPRESENTATIVE STORY said it was a simple bill to put the rules into statute to prevent the department from getting into a bind. It was determined that SENATOR JABS would carry the bill in the Senate, should it pass this committee.

EXECUTIVE ACTION ON HB 84

Motion: SENATOR CRIPPEN MOVED THAT HB 84 BE CONCURRED IN.

Motion/Vote: The MOTION CARRIED UNANIMOUSLY on an oral vote.

EXECUTIVE ACTION ON HB 356

DATE _____

3/14/95

SEN:1995
wp.rollcall.man

HB 84 Testimony of Dan Anderson, Administrator, Mental Health Division, Department of Corrections and Human Services.

The purpose of this bill is to clarify the authority of the Director of the Department of Corrections and Human Services with regard to the placement of certain persons who have been convicted of crimes and sentenced to the Director's custody.

It applies to individuals who have been found guilty of a crime but who, at the time of commission of the crime, were mentally ill to the extent that they could not appreciate the criminality of the act or could not conform their behavior to the requirements of the law. The Judge may sentence these individuals to the custody of the Director for placement.

HB 84 makes clear that the Director has the discretion to place the individual in a correctional or mental health institution and that, based on changes in the person's condition, can transfer the individual between institutions.

It is important when a convicted criminal is placed in a mental health facility, such as Montana State Hospital, for treatment that the Department be able to move that individual to a correctional facility when the person no longer needs hospitalization. Similarly, the Director should be able to transfer the inmate back to the State Hospital if his or her psychiatric condition deteriorates at later time.

Current law does not explicitly describe the authority of the Director to make these judgements. HB 84 would allow the Director to determine the appropriate placement based on assessments done by mental health and correctional professionals working for the Department.

hb84test.1

TESTIMONY TO THE SENATE JUDICIARY COMMITTEE ON HOUSE BILL 84

HB 84

Carl L. Keener, M.D.

Medical Director

Montana State Hospital

House Bill 84 would allow the Director of Corrections and Human Services to transfer individuals sentenced as guilty but mentally ill to the most appropriate setting. Individuals who might need transfer from the hospital to the prison fall in three main groups:

1. Those who were misdiagnosed initially or quickly recover from any mental illness soon after being placed at the hospital.
2. Those who have a mental illness but refuse to cooperate with treatment.
3. Those who do not respond to any treatment, such as personality disorders and delusional disorders.

Individuals who might be transferred from the prison to the hospital include those who have shown symptoms of mental illness and who have been at the prison but need to be transferred back to the hospital for appropriate treatment.

We want to provide treatment for those who need it; however, it interferes with the mission of Montana State Hospital to have people sentenced there who no longer need treatment, who refuse to cooperate with treatment or for whom no known treatment is available. On the other hand, anyone sentenced for the commission of an offense, but who suffered from a mental illness at the time, will benefit from transfer to the hospital for immediate treatment when symptoms of mental illness recur. Evidence continues to accumulate supporting the benefit of immediate intervention when signs of mental illness first appear.

I firmly support House Bill 84 which I think provides not only for the best treatment of individuals with mental illness but also provides for the most cost effective intervention. I think this bill is particularly helpful for those individuals who may have been sentenced as guilty but mentally ill who later show no signs of mental illness. Those individuals are best served if released from the prison where at the time of release they can be channeled through appropriate programs of supervision and accountability. Those who have a mental illness, when released, are best served by discharge from the hospital to appropriate community services such as a mental health center where they can continue to get treatment as outpatients.

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Dan Anderson	DCI-15- MH	HB84	X	
Andrie Larose	Montana Advocacy	HB84		

VISITOR REGISTER

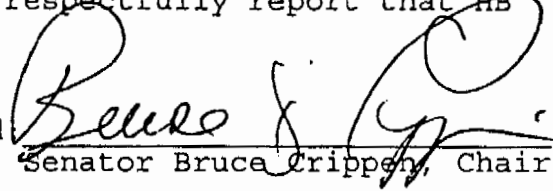
PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 14, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration
HB 84 (third reading copy -- blue), respectfully report that HB
84 be concurred in.

Signed 
Senator Bruce Crippen, Chair

 Amd. Coord.

SP Sec. of Senate

SEN. JABS
Senator Carrying Bill

591248SC.SRF

HOUSE BILL NO. 84

INTRODUCED BY STORY

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE AUTHORITY OF THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO PLACE A DEFENDANT SUFFERING FROM A MENTAL DISEASE OR DEFECT; AND AMENDING SECTION 46-14-312, MCA."

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"46-14-312. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence the defendant to be committed to the custody of the director of the department of corrections and human services to be placed AFTER CONSIDERATION OF THE RECOMMENDATIONS OF THE PROFESSIONALS PROVIDING TREATMENT TO THE DEFENDANT, in an appropriate correctional or mental health institution FACILITY for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The director may, AFTER CONSIDERING THE RECOMMENDATIONS OF THE PROFESSIONALS PROVIDING TREATMENT TO THE DEFENDANT, subsequently transfer the defendant to another correctional or mental health institution FACILITY that will better serve the defendant's custody, care, and treatment needs. The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.

(3) Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:

(a) the defendant no longer suffers from a mental disease or defect;

1 (b) the defendant's mental disease or defect no longer renders the defendant unable to appreciate
2 the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of
3 law;

4 (c) the defendant suffers from a mental disease or defect but is not a danger to the defendant or
5 others; or

6 (d) the defendant suffers from a mental disease or defect that makes the defendant a danger to
7 the defendant or others, but:

8 (i) there is no treatment available for the mental disease or defect;

9 (ii) the defendant refuses to cooperate with treatment; or

10 (iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or
11 defect.

12 (4) The sentencing court may make any order not inconsistent with its original sentencing
13 authority, except that the length of confinement or supervision must be equal to that of the original
14 sentence. The professional person shall review the defendant's status each year."

15 -END-